

109 FERC ¶ 61,299  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeene G. Kelly.

PJM Interconnection, L.L.C., and  
Duquesne Light Company

Docket Nos. ER05-85-000  
and ER05-85-001

PJM Interconnection, L.L.C.

Docket No. ER05-106-000

ORDER ACCEPTING PROPOSED INTEGRATION FILING  
AND FTR ALLOCATIONS, SUBJECT TO REFUND AND CONDITIONS

(Issued December 20, 2004)

1. On October 28, 2004, as amended on November 19, 2004, PJM Interconnection, L.L.C. (PJM) and Duquesne Light Company (Duquesne) (collectively the Filing Parties) submitted for approval, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> proposed rates and related revisions to PJM's operating agreements for the purpose of integrating Duquesne into PJM, effective January 1, 2005. The Filing Parties state that while Duquesne is solely responsible for those aspects of their filing addressing rate matters, the Filing Parties are collectively proposing certain conforming non-rate amendments to PJM's operating agreements. In a related filing made on October 29, 2004, PJM submitted for filing a proposed initial allocation of Financial Transmission Rights (FTRs) for the Duquesne Zone for the period January 1, 2005 to May 31, 2005.

2. For the reasons discussed below, we will accept the proposed tariff changes submitted by the Filing Parties, in Docket No. ER05-85-001, *et al.*, and by PJM, in Docket No. ER05-106-000, subject to refund and conditions, to become effective January 1, 2005.

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<sup>1</sup> 16 U.S.C. § 824d (2000).

**Background****A. Docket No. ER05-85-001, *et al.***

3. Duquesne states that the proposed transmission rates set forth in its revised tariff sheets in Docket No. ER05-85-000, *et al.*, are based on a proposed revenue requirement of \$30,767,631, applicable to the following Rate Schedules under the PJM open access transmission tariff (OATT): Schedule 1A (Transmission Owner Scheduling, System Control and Dispatch Service); Schedule 7 (Firm Point-to-Point Transmission Service); Schedule 8 (Non-Firm Point-to-Point Transmission Service); and Attachment H (Network Integration Transmission Service). Duquesne notes that this proposed revenue requirement and the billing determinants used to incorporate Duquesne into PJM are, with certain limited exceptions discussed below, the same as those currently reflected in Duquesne's tariff, which was previously approved by the Commission, in Docket No. OA96-56-000, as part of a 1998 settlement agreement.<sup>2</sup>

4. With respect to Duquesne's proposed settlement rate revisions, Duquesne states that it is proposing to remove the 1995 FERC Assessment from its annual transmission revenue requirement to be consistent with the Commission's guidance, as provided in *New PJM Companies, et al.*<sup>3</sup> In addition, Duquesne proposes to use annual coincident peak (CP) demand to calculate its network service rate in place of the 12 CP methodology currently used under Duquesne's tariff. Duquesne also proposes to add daily on-peak and off-peak rates for firm and non-firm point-to-point transmission services and hourly on-peak and off-peak rates for non-firm point-to-point transmission service, consistent with PJM OATT Schedules 7 and 8. Finally, Duquesne, proposes a per MWh rate for Schedule 1 of the PJM OATT in place of the MW rate currently reflected in the Duquesne tariff.

5. On November 19, 2004, in Docket No. ER05-85-001, the Filing Parties submitted a supplemental filing to formally identify as a grandfathered contract, a 1985 point-to-point firm transmission service agreement (AES Agreement) entered into with AES Beaver Valley, Inc. (AES). Specifically, the Filing Parties state that the derivation of the network service revenue requirement made in their initial request, herein, showed that Duquesne will continue to receive the payments attributable to the AES Agreement.

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<sup>2</sup> See Duquesne Light Company, Docket No. OA96-56-000, February 11, 1998 (unpublished letter order).

<sup>3</sup> 108 FERC ¶ 61,140 (2004).

6. In support of its proposed grandfathered treatment for the AES Agreement, Duquesne asserts that AES will not be responsible for multiple transmission charges following Duquesne's integration into PJM and that, as such, Commission policy permits the continuation of the contract.<sup>4</sup> Duquesne further states that while such a contract could be treated outside the PJM OATT, PJM is willing to implement firm grandfathered service for the AES Agreement using PJM's congestion charge and auction revenue rights (ARR) procedures. The Filing Parties note that PJM is currently discussing these options with AES.

**B. Docket No. ER05-106-000**

7. PJM states that pursuant to Schedule 1, section 5.2.2(e) of the PJM Operating Agreement and a corollary provision included in its OATT, at Attachment K, PJM is required, prior to its initial allocation of FTRs in a new zone such as the Duquesne Zone, to submit its proposed allocations in a section 205 filing. PJM states that its filing is being submitted in compliance with this requirement.

8. PJM states that the initial FTR allocations included in its filing are for an interim period only (from the January 1, 2005 start-up date of the Duquesne Zone through the end of the current planning period, *i.e.*, May 31, 2005). PJM states that this proposed interim allocation is necessary, given the fact that PJM allocates FTRs, as well as its ARRs on an annual planning period basis, *i.e.*, from June 1 of a calendar year through May 31 of the subsequent calendar year.

9. PJM states that in accordance with its established procedures under the PJM OATT, its proposed partial-period allocation reflected in its filing consists of FTRs, not ARRs. PJM notes, however, that for the full-year allocation it will file next spring, customers in PJM's new zones (including those customers located in the Duquesne Zone) will be given the option of receiving an allocation of either FTRs or ARRs.

10. PJM states that the FTR allocations reflected in its filing have been allocated in two stages, as required by Schedule 1, section 7 of the PJM Operating Agreement. PJM states that in its Stage One allocation (made to all network integration transmission service in the Duquesne Zone), 100 percent of all FTRs requested were awarded. Moreover, PJM states that in its Stage Two allocation (made to all firm point-to-point transmission paths), no FTRs were requested and therefore none were pro-rated.

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<sup>4</sup> See Amended Filing at 3, note 2, *citing* Potomac Electric Power Company, 83 FERC ¶ 61,162 at 61,688-89 (1998) (*PJM Restructuring Order*), *order on reh'g*, 93 FERC ¶ 61,111 at 61,314-15 (2000), *rev'd in part on other grounds*, Atlantic City Electric Company v. FERC, 295 F.3d 1 (D.C. Cir. 2002) (Atlantic City).

11. PJM states that unlike the FTR allocation requests for other recently integrated zones, in which network service users requested the majority of their FTR megawatts in stage 1 (*i.e.*, from historic resources), only 38 percent of the total FTR megawatts for network service users in the Duquesne Zone were requested in stage 1. PJM states that many network service users instead preferred to request FTRs sourced at locations other than the historic stage 1 resource locations. PJM states that these departures from reliance on historic resources led to pro-rationing of some FTR requests.

12. PJM requests an effective date of January 1, 2005 for its proposed FTR allocations, consistent with the start-up date of the Duquesne Light Zone.

### **Notice and Responsive Pleadings**

13. Notice of PJM's filing, in Docket No. ER05-106-000, was published in the *Federal Register*,<sup>5</sup> with interventions and protests due on or before November 19, 2004. Notices of intervention and motions to intervene were timely submitted by Allegheny Power and Allegheny Energy Supply (Allegheny) and FirstEnergy Solutions Corporation (FirstEnergy).

14. Notice of the Filing Parties' initial filing and amended filing, in Docket No. ER05-85-000, *et al.* was published in the *Federal Register*,<sup>6</sup> with interventions and protests due on or before December 3, 2004. Notices of intervention and motions to intervene were timely submitted by Exelon Corporation; Allegheny; FirstEnergy; Pennsylvania Office of Consumer Advocate; and AES. A protest was filed by AES.

15. In its protest, AES objects to the Filing Parties' proposed grandfathered treatment of the AES Agreement. AES asserts that following the integration of Duquesne into PJM, continued service under the AES Agreement would be redundant (and thus unnecessary) because it would replicate a network transmission service (including an allocation of ARRs) already provided by PJM to the purchaser of AES' output, *i.e.*, to Allegheny. In other words, AES argues that because Duquesne's intergration into PJM will allow Allegheny to secure the transmission and delivery of AES's output to Allegheny free of any congestion costs, under its network contract, the AES Agreement covering a portion of that path, under AES's point-to-point contract, is no longer needed.

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<sup>5</sup> 69 Fed. Reg. 65,419 (2004).

<sup>6</sup> *Id.* at 70,138.

16. AES explains that under the AES Agreement, Duquesne has been providing point-to-point transmission from the interconnection of AES' facility, in Monaca, Pennsylvania, to the Duquesne/Allegheny interconnection (which is now a part of the PJM system). AES states that Allegheny purchases the output of the AES facility and, as a PJM network customer, has designated the AES facility as a network resource for which it nominates and receives ARRs. AES further states that commencing June 1, 2005, Allegheny will be fully entitled to Stage One nomination rights for ARRs that originate at the AES bus and terminate at the Allegheny load zone. AES asserts that given this full access to ARRs, there is no additional service that would be required by AES in order for AES to supply Allegheny.

17. In support of its position that Duquesne's grandfathered treatment request should be rejected, AES argues that a double charge of the sort that would be permitted under Duquesne's request cannot be considered just and reasonable even where, as here, two different entities (AES and Allegheny) would be paying those charges. AES argues, in this regard, that the Commission's 1998 finding in the *PJM Restructuring Order* (as relied upon by Duquesne) cannot be reconciled with the Commission's more recent rulings holding that a double charge is not just and reasonable, even if two different entities are paying the duplicate charges.<sup>7</sup> AES concludes that any lost revenues attributable to the termination of the AES Agreement could be recovered by Duquesne as a transition cost.

18. On December 10, 2004, Duquesne filed an answer to AES's protest in which it asserts that AES will not pay a pancaked rate; rather, AES will only be required to pay the contract rate to which it agreed under the AES Agreement. Duquesne further argues that the AES Agreement may not be abrogated, as requested by AES, absent a public interest showing. Finally, Duquesne distinguishes the two cases relied upon by AES (the *MISO Order* and the *Ameren Order*), asserting that both cases involved *inter*-RTO transmission services or services between certain specified companies and RTOs, while in the instant case, the charges at issue cover *intra*-RTO agreements.

19. On December 14, 2004, AES filed an answer to Duquesne's answer, in which it renews its assertion that the *MISO Order* and the *Ameren Order* should be applied to the facts presented here. In addition, AES points out that the AES Agreement, among other things, provides for certain energy banking and balancing services. AES states that it is not clear how Duquesne intends to perform these services after it is integrated into PJM or even whether it can do so. AES concludes that if the AES Agreement is

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<sup>7</sup> AES protest at 7, *citing* Midwest Independent Transmission System Operator, Inc., 109 FERC ¶ 61,168 at P 2 (2004) (*MISO Order*) and Ameren Services Company, 105 FERC ¶ 61,216 (2003) (*Ameren Order*).

grandfathered, AES will expect Duquesne to perform all of its obligations under that agreement, such that AES will be no worse off financially than it is under the current agreement.

## **Discussion**

### **A. Procedural Matters**

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>8</sup> all timely filed motions to intervene are granted and any motions to intervene out-of- time filed before the issuance of this order are granted. Rule 213(a) of the Commission's Rules of Practice and Procedure<sup>9</sup> prohibits an answer to a protest or an answer to an answer, unless otherwise permitted by the decisional authority. We will accept the answers filed by Duquesne and AES because they have aided the Commission in clarifying certain issues, as discussed below.

### **B. Analysis**

21. We will accept and suspend the Filing Parties' proposed tariff revisions, in Docket No. ER05-85-000, *et al.*, and PJM's proposed FTR allocation, in Docket No. ER05-106-000, subject to refund and the conditions discussed below, to become effective January 1, 2005.

22. We will deny AES's request to abrogate the AES Agreement. As noted above, AES is required to pay an agreed rate for the long-term firm transmission service provided by Duquesne under the AES Agreement. That service permits AES to transmit the output of its facility from its point of interconnection with Duquesne to the Duquesne/Allegheny border. In a number of recent orders, the Commission has found that the integration of a utility into an RTO does not constitute a sufficient basis for abrogating a pre-existing service agreement, provided that the customer continues to receive service commensurate with the service to which it is entitled under that contract.<sup>10</sup>

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<sup>8</sup> 18 C.F.R. § 385.214 (2004).

<sup>9</sup> *Id.* at § 385.213(a)(2).

<sup>10</sup> See PJM Interconnection, L.L.C., 106 FERC ¶ 61,253, at P 40-41 (2004); PJM Interconnection, L.L.C., 108 FERC ¶ 61,246, at P 32-33 (2004) (customers can terminate long-term point-to-point contracts when they are unable to obtain FTRs commensurate with their previous contracts); PJM Interconnection, L.L.C., 109 FERC ¶ 61,012 at 61,064-65 (2004) (pre-existing contracts not abrogated). See also *Atlantic City*, 295 F.3d at 14-15 (D.C. Cir. 2002) (vacating Commission (continued ... )

23. In the *PJM Restructuring Order*, the Commission declined to abrogate bilateral contracts of this sort where the transmission customer, following the integration at issue in that case, was not required to pay multiple charges on the transmission system.<sup>11</sup> We found, rather, that a point-to point transmission contract held by a generator to serve a utility would not be treated as if the utility is the single customer, paying multiple charges. Similarly, in this case, AES pays only the rate for its firm transmission service. As such, it is not entitled to abrogate its contract simply because its customer, Allegheny, also pays network access charges under a separate agreement.

24. Nor do our findings in the *MISO Order* and the *Ameren Order* eliminating pancaked rates between MISO and PJM justify abrogation of the AES Agreement. In fact, in those orders we only addressed *inter*-RTO pancaked rates, not *intra*-RTO transactions, and, in any event, applied our rulings on a prospective basis only to agreements under the transmission tariff of the RTO. As such, we did not abrogate payment obligations, as required under a grandfathered agreement.<sup>12</sup>

25. However, as discussed above, grandfathered treatment of the AES Agreement will require that AES receive service from Duquesne, or PJM, commensurate with the service to which AES is entitled under the AES Agreement. We agree with AES, moreover, that Duquesne and PJM have not yet fully addressed how they intend to perform these obligations, although the filings indicate that parties are still discussing how best to accommodate AES's contractual entitlements as applied within the operational parameters of the PJM system.

26. Accordingly, we will accept and suspend the Filing Parties' integration proposal, in Docket No. ER05-85-000, *et al.*, and PJM's related FTR allocation proposal, in Docket No. ER05-106-000, subject to refund, with the condition that AES not be charged congestion costs with respect to power transmitted over the path specified in the AES Agreement. We will also require the Filing Parties to make a filing, within 30 days of

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abrogation of contracts); Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. Regulations Preambles ¶ 31,036, at 31,663-64 (1996) (contracts not abrogated).

<sup>11</sup> 83 FERC at 61,688-89.

<sup>12</sup> *MISO Order*, 109 FERC at P 61 and 66; *Ameren Order*, 105 FERC at P 32.

this order, detailing how these and any related contractual entitlements will be handled following Duquesne's integration into PJM, including the rights and obligations raised by AES in its protest and its answer (*e.g.*, the allocation of FTRs, imbalance service, etc.).

The Commission orders:

(A) The Filing Parties' proposed tariff revisions, in Docket Nos. ER05-85-000 and ER05-85-001, and PJM's FTR allocation filing, in Docket No. ER05-106-000, are hereby accepted for filing, subject to suspension, refund and conditions, to become effective January 1, 2005, as discussed in the body of this order.

(B) The Filing Parties are hereby directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.